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224-439—66

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 85

PLACID OIL COMPANY AND LA-TERRE CO., INC.,
PETITIONERS

v.

UNION PRODUCING COMPANY AND TEXAS GULF PRODUCING COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND/OR TO THE COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's order of May 16, 1966, 384 U.S. 937, inviting the Solicitor General to file a brief expressing the views of the United States in this matter.

This suit was brought to determine the boundary between land held by respondents Union Producing Company and Texas Gulf Producing Company under a lease from petitioner La-Terre Co., Inc., and land held by petitioner Placid Oil Company under a subsequent lease from La-Terre. The Louisiana district court held for petitioners. The court of appeal reversed (Pet. App. 18b–58b). The Supreme Court

of Louisiana denied review (Pet. App. 59b), stating that [a]ccording to the facts of the case, as found to be by the Court of Appeal, the result reached by the Court is correct."

The United States has no present proprietary interest in the land which is the subject matter of this litigation. Nor has it any such interest in any other real property located in the two townships whose boundaries underlie the dispute. If, therefore, the decision below involves no more than a determination of the intent of the parties in accordance with principles of State law, the United States has no interest in the dispute or in the manner of its resolution. If, on the other hand, the court below purported to set aside township boundaries approved and promulgated under the federal land survey program as authorized by Congress (43 U.S.C. 751–775), then a substantial federal question is presented in which the United States is concerned.

The survey of the public lands of the United States is a monumental undertaking of the national government which has been carried forward now for almost two centuries. In essence, the survey has entailed the subdivision, prior to settlement, of the entire western domain on a systematic plan designed to encourage the settlement of the wilderness, to maximize security of title for grantees of the United States, and to facilitate the identification and protection of public lands. This survey program, which represented a major departure from the cadastral

methods prevailing in the original 13 States,[1] was first adopted in 1785 by the Continental Congress for application to the lands ceded by the several States to the United States.[2] The ordinance of 1785 directed the Geographer of the United States to lay out east-west base lines and north-south meridians, to mark upon the ground and record on plats numbered, rectangular townships of six miles square subdivided into sections of one mile square. Following the ratification of the Constitution, the original plan, with minor modifications, was adopted and extended by Congress, starting with the Act of May 18, 1796 (1 Stat. 464). That Act created the post of Surveyor General and required him to survey and divide "the lands lying northwest of the river Ohio, and above the mouth of the river Kentucky, in which the titles of the Indian tribes have been extinguished" (1 Stat. 465). The Act preserved the plan of regularly numbered, marked and recorded townships and sections, and it authorized the sale of townships or sections as surveyed while reserving to the United States four sections at the center of each township.

Commencing with the area now included in the State of Ohio, the survey program continued across the continent as additional lands were acquired by the federal government. The program today embraces

[1] See Clark L. Gumm, "The Foundation of Land Records" in Bureau of Land Management, *Our Public Lands* (Oct. 1957), p. 4.

[2] 28 Jour. of the Cont. Cong. 375–381.

thirty States and extends over 1.3 billion acres.[3] The survey has served as the principal basis for identifying some 6.5 million conveyances from the public domain, including 287 million acres granted under the homestead acts (43 U.S.C. 161), 225 million acres granted to States for various purposes, and 94 million acres granted as railroad subsidies.[4] Furthermore, the Bureau of Land Management, as a successor, under the Secretary of the Interior, to the Surveyor General, continues to extend the survey. Some 470 million acres, principally in Alaska, remain to be surveyed. In 1964 the Bureau completed and officially accepted new surveys encompassing 523,302 acres.[5] At the same time, it has been necessary to resurvey lands where boundaries have become obscure, original monuments obliterated and the like. During 1964, the Bureau accepted such resurveys encompassing more than a million acres.[6]

Given the magnitude of the survey project, the conditions prevalent in the West during much of the last century, the difficulties of the terrain, the occasional use of unreliable contractors, and the relative crudeness of surveying instruments, it was probably inevitable that departures from the statutory plan

[3] Bureau of Land Management, *Public Land Statistics* (1964), p. 125. The States not included within the survey are the 13 former colonies, as well as Kentucky, Maine, Vermont, West Virginia, Tennessee, Texas and Hawaii. A map indicating the scope of the survey and the base lines and principal meridians employed by it is annexed hereto as the Appendix.

[4] *Id.* at 6.

[5] *Id.* at 128.

[6] *Ibid.*

should occur. In any event, it is well recognized that the lines run were not always true, the distances measured were not always accurate, and gaps, omissions and overlaps of various sorts occurred with some frequency. Some of these errors, when discovered in the course of surveying, could be rectified without difficulty. Thus, 43 U.S.C. 751 (para. 5), which derives from the Act of May 10, 1800 (2 Stat. 73), provides:

> Where the exterior lines of the townships which may be subdivided into sections or half-sections exceed, or do not extend six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western and northern ranges of sections or half-sections in such township, according as the error may be in running the lines from east to west, or from north to south; the sections and half-sections bounded on the northern and western lines of such townships shall be sold as containing only the quantity expressed in the returns and plats respectively, and all others as containing the complete legal quantity.

The Surveyor General and his successors have had discretionary authority to conduct resurveys or retracements of prior surveys in order to redetemine boundaries rendered doubtful by the obliteration of monuments or by conflicts between field notes, plats and terrain. See, 43 U.S.C. 772, 773; *Lane* v. *Darlington,* 249 U.S. 331; *Kirwan* v. *Murphy,* 189 U.S. 35.[7] Such resurveys, however, entail difficulties of

[7] See, generally, U.S. Department of the Interior, *Manual of Surveying Instructions* (1947), pp. 309–341.

their own. But, while the government's procedures with respect to resurveys have been improved and simplified over the years,[8] it has never been doubted that such resurveys cannot impair any pre-existing right or title in the land. *Lane* v. *Darlington*, *supra*; *Cragin* v. *Powell*, 128 U.S. 691, 699.

Whatever the preferable course with respect to corrective surveys, the key point is that while the courts have jurisdiction to adjudicate all questions of proprietary interest, the establishment and correction of the federal survey falls within the exclusive province of the Secretary of the Interior and his predecessors. This Court has repeatedly recognized this division of functions. In *Cragin* v. *Powell*, 128 U.S. at 697–700, while noting that "the courts have power to protect the private rights of a party who has purchased, in good faith, from the government against the interferences or appropriations of corrective resurveys made by that department [the Land Department]" the Court stressed that "the power to make and correct surveys of the public lands be-

[8] In *Cragin* v. *Powell*, 128 U.S. 691, 698, the Court quoted a letter from the Commissioner of the General Land Office to the surveyor general for Louisiana:

"* * * A resurvey, properly considered, is but a retracing, with a view to determine and establish lines and boundaries of an original survey, * * * but the principle of retracing has been frequently departed from, where a resurvey (so called), has been made and new lines and boundaries have often been introduced, mischievously conflicting with the old, and thereby affecting the areas of tracts which the United States had previously sold and otherwise disposed of."

longs to the political department of the government." The Court there concluded:

> Whether the official survey made by Connelly is erroneous, or should give way to the extent of its discrepancies to the survey reported by McLeran, is a question which was not within the province of the court below, nor is it the province of this court to consider and determine. The mistakes and abuses which have crept into the official surveys of the public domain form a fruitful theme of complaint in the political branches of the government. The correction of these mistakes and abuses has not been delegated to the judiciary, except as provided by the act of June 14, 1860, 12 Stat. 33, c. 128, in relation to Mexican Land claims, which was repealed in 1864, 13 Stat. 332, c. 194, § 8. From the earliest days matters appertaining to the survey of public or private lands have devolved upon the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. Rev. Stat. § 453. * * *

Similarly, in *Russell* v. *Maxwell Land Grant Co.*, 158, U.S. 253, 256, 259, the Court observed that "A survey made by the proper officers of the United States, and confirmed by the Land Department, is not open to challenge by any collateral attack in the courts." The Court emphasized the distinction noted above:

> * * * Whether a survey as originally made is correct or not is one thing, and that, as we have seen, is a matter committed exclusively to the Land Department, and over which the

> courts have no jurisdiction otherwise than by original proceedings in equity. While on the other hand, where the lines run by such survey lie on the ground, and whether any particular tract is on one side or the other of that line, are questions of fact which are always open to inquiry in the courts. * * *

The delegation to the executive branch of exclusive jurisdiction in the implementation of the federal survey program is fundamental to the congressional scheme. Supervision of the program is entrusted to the Secretary of the Interior (43 U.S.C. 2). Authority to make resurveys is left to the Secretary's discretion (43 U.S.C. 772, 773), as is power to authorize departures from the rectangular mode of survey (43 U.S.C. 770). Most indicative, however, of the conclusive nature of the survey as promulgated by the Secretary are the three "principles" laid down by Congress in 1805 (2 Stat. 313) and preserved by all subsequent legislation (43 U.S.C. 752):

> First. All the corners marked in the surveys, returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate * * *.
>
> Second. The boundary lines, actually run and marked in the surveys returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines as returned, shall be

> held and considered as the true length thereof. * * *
>
> Third. Each section or subdivision of section, the contents whereof have been returned by the Secretary of the Interior or such agency as he may designate, shall be held and considered as containing the exact quantity expressed in such return * * *.

These principles relate intimately to the legislate objectives. From the outset the survey system was intended by Congress to facilitate the sale of public lands, which was seen as a major source of revenue for the national government. At the same time it was hoped that, by subdividing the land into relatively small sections, purchases by farmers and other persons of modest means could be encouraged and wholesale land speculation discouraged. See 5 Annals of Cong. 329 *et seq.* Both purposes were subserved by a survey system designed to enable countless small purchasers to identify and enter with confidence sections selected at distant Land Offices and to minimize the likelihood of subsequent litigation. Moreover, precisely because the survey was based on a simplified, integrated grid system, if courts could review and revise the survey, voluminous litigation and correspondingly grave uncertainty were bound to result. Indeed, judicial relocation of a single base line or meridian might unsettle thousands of individual holdings. As this Court observed a century ago, "great confusion and litigation would ensue if the judicial tribunals, state and federal, were permitted to interfere and overthrow the public surveys" (*Haydel* v. *Dufresne,* 17 How. 23, 30).

The fundamentals of the federal survey system, including the principle of a commitment to executive control, have not been altered by Congress in the course of nearly two hundred years. Nor have underlying reasons ceased to be relevant. It is true today as in 1854 that judicial revision of the survey would entail "great confusion and litigation." Moreover, notwithstanding the very extensive grants of public land to States and private persons, the federal government remains the proprietor of more than 700 million acres, or nearly one-third of the land of the nation.[9] The identification, description, and protection of that public domain is largely dependent upon the survey. Furthermore, the gradual disposition of portions of the public lands continues to proceed with reference to the survey. In 1964 the Bureau of Land Management granted over 9,000 patents covering more than 2 million acres.[10]

Both as proprietor and grantor, the United States is committed to the preservation of the integrity of the public lands survey system. As the Court has long recognized, *ad hoc* judicial revision of the survey is incompatible with the intent of Congress and the proper functioning of that system.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JULY 1966.

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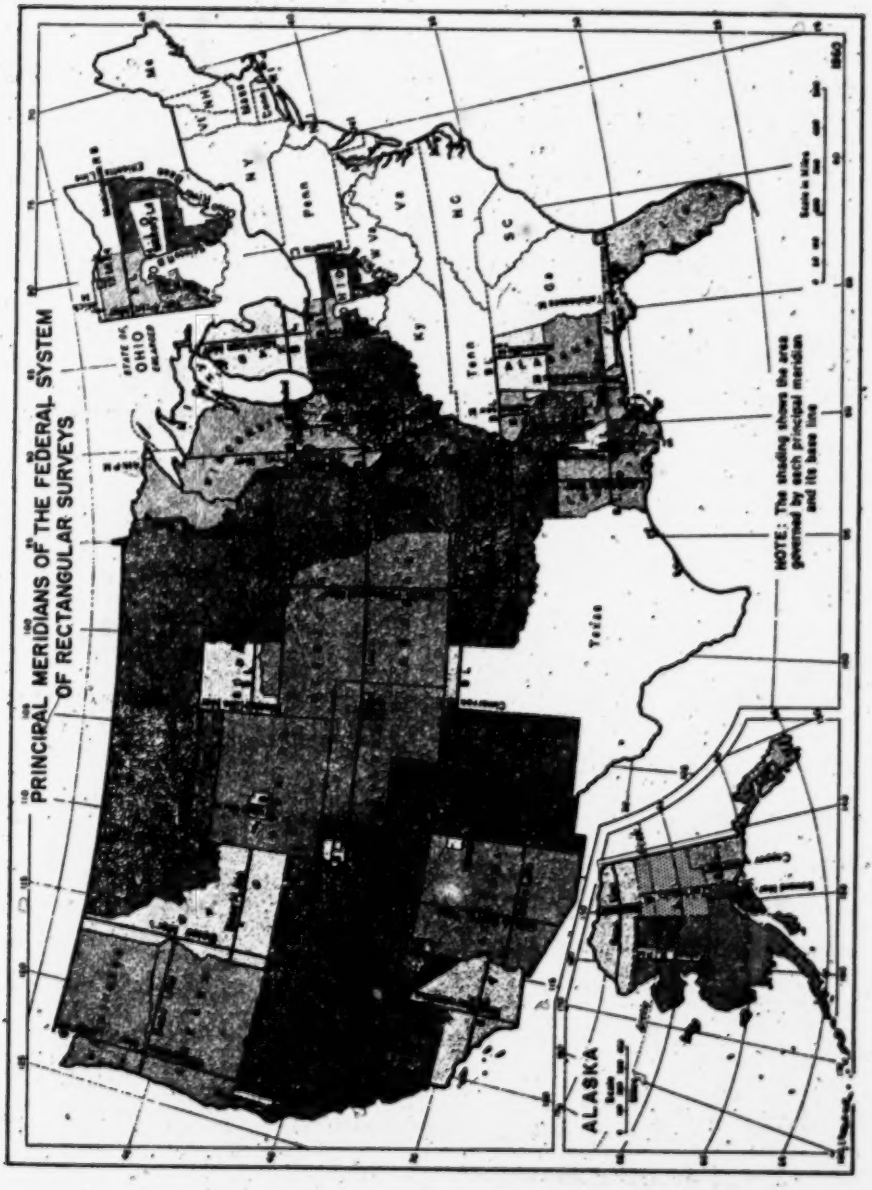
[9] Bureau of Land Management, *Public Land Statistics* (1964), p. 1.

[10] *Id.* at 42.

APPENDIX


PRINCIPAL MERIDIANS OF THE FEDERAL SYSTEM OF RECTANGULAR SURVEYS
NOTE: The shading shows the area governed by each principal meridian and its base line
ALASKA
Texas

U.S. GOVERNMENT PRINTING OFFICE: 1960